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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,186

03/19/2004

Werner Doetsch

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EXAMINER

CHORBAJI, MONZER R

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

06/25/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/804,186</p>	<p>Applicant(s) DOETSCH ET AL.</p>	
	<p>Examiner MONZER R. CHORBAJI</p>	<p>Art Unit 1797</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

Response to Arguments

On pages 2-7; Applicant argues that the range disclosed by Feasey in Example 5 for hydrogen peroxide cannot be used as a general teaching for the range of 10 to 5000 ppm; that Feasey describes various different ranges as the most effective for the particular intended use; that the closest embodiment to the claimed invention taught by Feasey relates to metal pickling not to sterilizing contact lenses; that the Declaration under 37 C.F.R. 1.132 provided statements made by experts in the art that were not given weight without objective data; and that one skilled in the art, based on Vogeles teachings, would be instructed away from the use of hydrogen peroxide as a sterilizing agent.

Grimberg's broad teachings are directed to sterilizing articles in general (col.1, lines 11-12; col.2, lines 31-32). While Grimberg illustrates foodstuff, cosmetic products and pharmaceutical items as suitable examples (col.4, lines 3-10), he does not limit his applications to only those items. Similarly, Feasey describes that his method is to be applied in a very wide variety of different types of uses (col.4, lines 13-28). Feasey discloses sterilizing contact lenses and treating metal surfaces for illustrative purposes only (col.4, lines 52-58) without intending to limit the applications of his method. Therefore, the broad teachings of Feasey in applying his stabilized hydrogen peroxide solutions with phosphonic acid to various different uses, would enable one of ordinary skill in the art to modify the concentration of phosphonic acid disclosed in Grimberg to a range of between 50 to 1000 ppm since phosphoric acid in this range is found to be the most effective as explained by Feasey (col.7, example 5).

As to the argument regarding the 1.132 Declaration dated 2/18/09; Applicant's assertions, statements made by Experts in the art, with regard to the unexpected stability constitute mere arguments not facts. Note that combination of Grimberg, Feasey and Vogeles lead to the alleged unexpected hydrogen peroxide concentration and temperature values. Furthermore, Applicants state that the stability of hydrogen peroxide is reduced as temperature is increase without providing actual proof. This is considered a mere argument that does not commensurate in scope with the claimed invention. Therefore, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

As to the argument regarding the Vogeles reference; it was combined with modified Grimberg for its teaching to heat the dip bath to a temperature below 90 degrees Celsius and not for using hydrogen peroxide as a sterilizing agent.